IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. Criminal Appeal No.1238/2003

Atmaram S/o Prabhulal
...accused-appellant
Versus
State of Rajasthan through Public Prosecutor
...respondent

2. S.B. Criminal Appeal No.0844/2003

Atmaram S/o Prabhulal
...accused-appellant
Versus
State of Rajasthan through Public Prosecutor
...respondent

Date of Order ::: 26.4.2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Rohan Jain, Amicus Curiae,
for accused-appellant
Smt. Nirmala Sharma, P.P., for the State
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BY THE COURT:-

The only argument raised on behalf of accused-appellant by the learned counsel is that in the facts and circumstances of the case and looking to the nature of injury and the statements of PW-6 Dr. Arun Sharma and PW-8 Kanchan Bai W/o deceased, the sentence of imprisonment of the accused-appellant awarded by the trial court is absolutely excessive and the same may be reduced to a period of imprisonment already

undergone by him. The learned counsel submits that the accused-appellant is in jail since 30th November, 2002, and since then he has already undergone an imprisonment for 4 years 4 months and 26 days, therefore, the period of his sentence may be reduced to a period of imprisonment already undergone by him.

Both the above appeals on behalf of accused-appellant Atmaram have been preferred by two different Advocates and the same were ordered to be tagged together, and are directed against the impugned judgment and order dated 21.8.2003 passed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Jhalawar, in Sessions Case No.39/2003, whereby the accused was convicted and sentenced under Section 304-II, IPC, to 7 years rigorous imprisonment and a fine of Rs.5000/-; in default of payment of fine to further undergo six months imprisonment.

The learned counsel for the accused-appellant has not challenged the order of conviction passed by the trial court against the accused in view of the statement of eye witnesses and rightly so as there are statement of the eye-witnesses against the appellant. However, the learned counsel contended that looking to the nature of injury and the statement of Dr. Arun Sharma that there was only one injury caused by blunt

object, the sentence against the accused-appellant awarded by the trial court be reduced.

I have considered the submissions of learned counsel for both the parties.

The impugned judgment of conviction has not been challenged by the learned counsel for the appellant, therefore, it is not necessary to discuss the facts and evidence of the case.

This Court in S.B. Criminal Jail Appeal No.540/2003 (Dharmendra Kumar Vs. State of Rajasthan) decided on 1.5.2006 reduced the sentence of the accused under Section 304-II, IPC, from 10 years RI to 5 years RI. The operative portion of the judgment reads as under:-

> "Consequently, the appeal of the accused-appellant is partly allowed. His conviction under Sections 304-II and 323 IPC is upheld. The sentence of imprisonment and fine under Section 323 IPC is also maintained. However, the sentence of ten years rigorous imprisonment and fine of Rs. 1000/- (in default of payment of fine, to further undergo one month's additional rigorous imprisonment) under Section 304-II, IPC, awarded to the accused-appellant by the trial court is reduced to a period of sentence of five years rigorous imprisonment and a fine of Rs.1000/-, in default of payment of fine, to further undergo fifteen days additional simple imprisonment."

This Court further in S.B. Criminal Appeal

No.1024/2001 (Mangi Lal Vs. State of Rajasthan) decided on 28.4.2006 reduced the sentence of imprisonment from 7 years RI to 5 years RI under Section 304-II, IPC. The operative Para of the judgment reads as under:-

> "Consequently, the appeal of the accused appellant is partly allowed. His conviction under Section 304 Part-II of the I.P.C., is maintained, as not challenged. The sentence of seven years Simple Imprisonment and a fine of Rs.1,000/- and in default of payment of fine to further undergo three months Simple Imprisonment, is reduced to a period of sentence of five years Simple Imprisonment and a fine of Rs.1,000/-, in default of payment of fine to further undergo 15 days Simple Imprisonment."

After considering all the facts and circumstances of the case particularly the nature of injury caused by the accused to the deceased and the statements of PW-6 Dr. Arun Sharma and PW-8 Kanchan Bai W/o deceased, I am inclined to reduce the sentence of imprisonment of the accused-appellant awarded by the trial court.

Consequently, both the appeals are partly allowed. The conviction of accused-appellant Atmaram under Section 304-II, IPC, is maintained, but his sentence is reduced to a period of 5 years rigorous imprisonment and a fine of Rs.5,000/-; in default of

payment of fine, to further undergo 1 month's simple imprisonment.

A copy of the judgment may be placed in S.B. Criminal Appeal No.0844/2003.

(Narendra Kumar Jain) J.

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